## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

TERRI DENICE GIBBONS Claimant	
VS.	) ) ) Docket No. 181,361
THE BOEING COMPANY - WICHITA Respondent	
AND	
AETNA CASUALTY & SURETY Insurance Carrier	
AND	
KANSAS WORKERS COMPENSATION FUND	<b>)</b>

## <u>ORDER</u>

Respondent appeals from a Preliminary Order entered by Administrative Law Judge John D. Clark on March 28, 1995.

## ISSUES

Respondent's application for review describes the issues as:

- (1) Lack of jurisdiction.
  - (a) Whether certain defenses apply.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

The present appeal comes before the Board because the Administrative Law Judge deferred the decision on claimant's application for vocational rehabilitation benefits and set the matter for a settlement hearing. Respondent argues that according to <u>Berry v. Boeing Military Airplanes</u>, 20 Kan. App. 2d 220 (1994) the date of accident for claimant's repetitive trauma injury would be after July 1, 1993. Claimant continued to do work after that date. Respondent contends the Administrative Law Judge erred in refusing to dismiss the application for vocational rehabilitation benefits.

The Appeals Board has concluded the arguments made in this appeal do not, in the present procedural posture, raise an issue which would be subject to review in the limited review granted the Appeals Board on appeals from preliminary hearings. The

Administrative Law Judge has not ruled on claimant's application. The arguments by respondent do not relate to an issue listed in K.S.A. 44-534a or otherwise allege that the Administrative Law Judge exceeded his jurisdiction. Therefore the Appeals Board does not have jurisdiction and the decision to defer the application remains in effect.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the decision of the Administrative Law Judge refusing to dismiss the request for preliminary hearing benefits and taking issues under advisement pending a settlement conference remains in effect as originally entered.

T IS SO ORDERED.
Dated this day of August, 1995.
BOARD MEMBER
BO, II CO MEMBER
BOARD MEMBER
BOARD MEMBER

c: Ray Hodge, Wichita, Kansas Boyd A. Byers, Wichita, Kansas Matthew Bretz, Hutchinson, Kansas John D. Clark, Administrative Law Judge David A. Shufelt, Acting Director